

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Fidelity & Guaranty Life Insurance Company,)	Civil Action No. 6:15-cv-04829-MGL
)	
Plaintiff,)	
)	
vs.)	CONSENT ORDER FOR
)	INTERPLEADER
Larry C. Brown, Stephanie B. Evans, and William S. Tolliver, as Personal Representative of the Estate of Larry O. Brown,)	
)	
Defendants.)	
)	

BEFORE THE COURT is the request of Plaintiff Fidelity & Guaranty Life Insurance Company (“F&G Life”), with the consent of Defendants Stephanie B. Evans and William S. Tolliver, as Personal Representative of the Estate of Larry O. Brown, to allow F&G Life to pay the proceeds of the subject life insurance policies into the Court and to discharge F&G Life from further liability relating to the policies pursuant to Rules 22 and 67 of the Federal Rules of Civil Procedure. The third defendant, Larry C. Brown, has not responded to the Summons and Complaint and is in default.

THE RECORD REFLECTS the following facts pertinent to the Order requested by F&G Life:

1. On May 14, 2008, OM Financial Life Insurance Company, the predecessor to F&G Life, issued a Term Life Insurance Policy insuring the life of Larry O. Brown (the “Insured”) with a face value of Eighty Thousand (\$80,000.00) Dollars and assigned Policy No.

xxxx9962. Per the Application, the Estate of Larry Brown was designated as the primary beneficiary in the event of the death of Larry O. Brown.

2. On June 18, 2008, OM Financial Life Insurance Company, the predecessor to F&G Life, issued a second Term Life Insurance Policy insuring the life of Larry O. Brown with a face value of Thirty-Six Thousand (\$36,000.00) Dollars and assigned Policy No. xxxx9961. Per the Application, Michael Foggie was designated as the primary beneficiary in the event of the death of Larry O. Brown.

3. F&G Life received a Request for Service form signed by the Insured and dated May 3, 2015. The Request for Service form requested that the primary beneficiary for Policy No. xxxx9961 be changed to Larry C. Brown, the son of the Insured.

4. On or about June 8, 2015, F&G Life received a fax from Michael F. Talley, Esq., attaching two Request for Service forms purportedly signed by the Insured and dated June 4, 2015. The Request for Service forms requested that the primary beneficiary for Policy Nos. xxxx9961 and 9962 be changed to Stephanie B. Evans, the cousin of the Insured.

5. By letters dated June 10, 2015, F&G Life wrote the Insured, stating that, in order to process the change of beneficiary requests for Policies Nos. xxxx9961 and xxxx9962, a signature verification was required.

6. Larry O. Brown died on June 16, 2015, in Greenville, South Carolina.

7. F&G Life received a Claimant's Statement from Larry C. Brown dated July 28, 2015, seeking payment of the death benefit proceeds pursuant to Policy No. xxxx9961 as the sole beneficiary.

8. F&G Life received a letter dated September 14, 2015 from William S. Tolliver requesting copies of the policies, any beneficiary changes made in the past two years, and

instructions on how to make a claim as a beneficiary. The letter enclosed a copy of William S. Tolliver's appointment as personal representative of the estate of Larry O. Brown by the Greenville County, South Carolina probate court.

9. On or about September 22, 2015, F&G Life received a fax from Stephanie B. Evans regarding the circumstances of the changes of beneficiary designations for Policy Nos. xxxx9961 and xxxx9962 and enclosing a copy of Larry O. Brown's driver's license.

10. By letters dated September 3, 2015, F&G Life wrote to Larry C. Brown and Stephanie B. Evans, notifying them that they may have a claim to the death benefits for Policy Nos. xxxx9961 and xxxx9962. The letters state that the Request for Service form dated June 4, 2015 naming Stephanie B. Evans as the primary beneficiary under both policies has not been processed because the requested signature verification had not been received. The letters state that F&G Life is currently in the process of resolving this potential dispute and that, if adverse claims to the death benefits still exist after F&G Life's review of all claimant information, F&G Life may be forced to file an interpleader action. The letters invited the claimants to work together to reach a solution and amicably resolve their competing claims.

11. On December 4, 2015, F&G Life instituted this interpleader action because it was in doubt as to which Defendant is entitled to payment of the proceeds under the Policies due to the competing claims, and F&G Life is or may be exposed to multiple or inconsistent liability and obligations under the Policies.

12. Defendant Larry C. Brown was served with process on December 17, 2015, and an Affidavit of Service was filed with the Court on January 13, 2016. Defendant Larry C. Brown has not filed an Answer or otherwise responded to the Complaint. Defendant William S. Tolliver, as Personal Representative of the Estate of Larry O. Brown, was served with process

and filed an Answer to the Complaint on January 4, 2016. Defendant Stephanie B. Evans was served with process and filed an Answer to the Complaint on March 15, 2016.

THE COURT HEREBY FINDS that it has jurisdiction over both the subject matter and the parties. The Court has subject matter jurisdiction over claims related to Policy No. xxxx9961 pursuant to 28 U.S.C. § 1335 because the action is in the nature of interpleader and because Larry C. Brown, an Ohio resident, and Stephanie B. Evans, a South Carolina resident, are adverse claimants of diverse citizenship and are claiming entitlement to the benefits arising under a policy of insurance with value in excess of \$500.00. The Court finds that it has subject matter jurisdiction over claims related to Policy No. xxxx9962 pursuant to 28 U.S.C. § 1332 because there is complete diversity between Plaintiff F&G Life, an Iowa corporation, and Defendants Stephanie B. Evans, a South Carolina resident, and William S. Tolliver, a Maryland resident serving as the personal representative of the estate of a South Carolina resident, and because the amount in controversy is in excess of \$75,000.00.

The Court finds that it has personal jurisdiction over Defendant Stephanie B. Evans because she is a South Carolina resident who was personally served with process and because she has not challenged the Court's exercise of personal jurisdiction in her responsive pleading. The Court finds that it has personal jurisdiction over Defendant William S. Tolliver, as Personal Representative of the Estate of Larry O. Brown, because he is the personal representative of the estate of a South Carolina resident and was personally served with process and because he has not challenged the Court's exercise of personal jurisdiction in his responsive pleading. The Court finds that it has personal jurisdiction over Defendant Larry C. Brown because the proceeds of Policy No. xxxx9961 are being interpleaded pursuant to 28 U.S.C. § 1335, and, accordingly, the

Court may issue nationwide service of process pursuant to 28 U.S.C. § 2361. Defendant Brown was personally served with process and is in default.

THE COURT HEREBY FINDS that multiple parties claim an interest in the same insurance proceeds and that it would be appropriate to allow such proceeds to be paid into the Court and to discharge F&G Life of all liability and obligations under the Policies. The Court further finds that all parties with a potential interest in the insurance proceeds have been named and properly served with a copy of the Complaint for Interpleader; however, Defendant Larry C. Brown has not made an appearance before this Court and is in default.

THE COURT IS FURTHER INFORMED that counsel of record agrees that F&G Life should be awarded the sum of Thirteen Thousand and No/100s (\$13,000.00) Dollars for its attorneys' fees and costs incurred in commencing and litigating this interpleader action. This sum is reasonable and may be withheld from the funds that F&G Life is currently holding and seeks to deposit with the Court, with such withholding to be allocated to each policy in proportion to their respective face values.

NOW, THEREFORE, in furtherance of the requested interpleader and in compliance with Rules 22 and 67 of the Federal Rules of Civil Procedure, the Court hereby orders the following:

1. F&G Life shall pay into the Court the insurance proceeds due and payable under Policy No. xxxx9961 in the amount of Thirty-Six Thousand and No/100s (\$36,000.00) Dollars, less Four Thousand Thirty-Four and 48/100s (\$4,034.48) Dollars hereby awarded to F&G Life for its attorneys' fees and costs.

2. F&G Life shall pay into the Court the insurance proceeds due and payable under Policy No. xxxx9962 in the amount of Eighty Thousand and No/100s (\$80,000.00) Dollars, less

Eight Thousand Nine Hundred Sixty-Five and 52/100s (\$8,965.52) Dollars hereby awarded to F&G Life for its attorneys' fees and costs.

2. F&G Life is hereby discharged from any further liability or obligation under the insurance policies covering the life of Larry O. Brown, including any and all riders thereto.

3. Each of the Defendants is enjoined and restrained from instituting any action against F&G Life for recovery of any proceeds related to the life insurance policies covering the life of Larry O. Brown;

4. F&G Life is hereby dismissed from this action, with prejudice.

5. This action shall continue between the Defendants for the purpose of determining the proper distribution of the amounts deposited with the Court.

IT IS SO ORDERED.

s/Mary Geiger Lewis

Hon. Mary Geiger Lewis
United States District Judge

June 27, 2016

CONSENT SIGNATURES ATTACHED

WE SO MOVE:

NELSON MULLINS RILEY &
SCARBOROUGH LLP

By: /s/ Graham R. Billings
Graham R. Billings
Federal Bar No. 11796
D. Larry Kristinik
Federal Bar No. 5744
Alana Odom Williams
Federal Bar No. 8094
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

*Attorneys for Plaintiff Fidelity & Guaranty
Life Insurance Company*

June 24, 2016

WE SO CONSENT:

JENNINGS LAW FIRM, LLC

By: /s/ Clayton L. Jennings
Clayton L. Jennings (D.S.C. I.D. No. 7839)
1151 E. Washington St.
Greenville, South Carolina 29601
Telephone: (864) 239-0055
Telecopier: (864) 239-4112
Email: jenningsfirm@bellsouth.net

*Attorney for Defendant William S. Tolliver, as
Personal Representative of the Estate of Larry
O. Brown*

WILLIAM D. FORE P.A.

By: /s/ William D. Fore
William D. Fore
Federal Bar No. 6520
PO Box 3852
Greenville, SC 29608
(864) 235-9628

Attorney for Defendant Stephanie B. Evans